

(2017) 05 CAL CK 0026
In the Calcutta High Court
Case No : 3052(W) of 2017

ABDUL HAMID & ANR. Vs BENGAL STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED & ORS.

Date of Decision : 16-05-2017

Acts Referred:

[Electricity Act, 2003](#), [Section 56\(2\)](#) -
Disconnection of supply in default of payment

Citation : (2017) 05 CAL CK 0026

Hon'ble Judges : Harish Tandon

Bench : SINGLE BENCH

Advocate : Ankit Agarwala, Alotriya Mukherjee, Srijan Nayek, Sumit Panja

Final Decision : Disposed off

Judgement

1. An important and legal point has arisen in the instant writ petition required to be answered by this Court. Before proceeding to formulate the point, the salient facts, which are more or less undisputed, are adumbrated herein below-

The West Bengal State Electricity Distribution Company Limited (hereinafter referred to as Distribution Company) provided the electric connection to energize mini submersible pumps to both the petitioners having Consumer Nos. 163099442 and 163090423 for irrigation purposes. By virtue of a family arrangement / settlement the petitioner no. 2 is permitted to use and occupy the land belonging to the petitioner no. 2 and therefore was also using the meter allotted to the petitioner no. 2 for such purposes.

The Distribution Company raised the bill on quarterly basis indicating the charges for consumption of electricity, which was duly paid. However, because of the fact that petitioner no. 1 was diagnosed with a chronic heart ailment and had to undergo a bypass surgery, the cultivation could not be done by him nor the petitioners could pay the electric charges to the Distribution Company, which led to the disconnection of electric supply through the meters installed therein on 12th December, 2012 and 13th December, 2012 respectively.

2. After recovery from the said ailment, the petitioner no. 1 applied for reconnection and paid the outstanding dues as demanded by the Distribution Company together with the reconnection charges. The electric supply was restored on 15th December, 2015. The officials of the Distribution Company came to inspect the meter reading for generation of the bill for the month of December, 2015 and it was informed to the petitioners that the said meter is defective because of it being unused for a long time. The bill for the month of June, 2016 was raised which not only contained the charges towards consumption of electricity during the period after restoration but also late payment surcharge to the tune of Rs. 87,540.27 Paisa and Rs. 1,15,298.37 Paisa. An application was filed before the Distribution Company to exempt from paying the aforesaid exorbitant amount, which was turned down by the Distribution Company on 19th January, 2016. The Distribution Company issued a Disconnection Notice upon the petitioner, which led the filing of writ petition being WP No. 1644(W) of 2016 before this Court.

3. While disposing of the writ petition on 30th March, 2016, a submission was advanced on behalf of the petitioners, which was also recorded therein that during the pendency of the said writ petition a revised bill was issued by the Distribution Company and the energy charges so claimed had already been deposited. It is, further recorded in the said order that the sole grievance remained over the entitlement of the Distribution Company to insist for the late payment surcharges. A direction was passed upon the petitioners to make a comprehensive representation before the Station Manager, Polba Customer Care Centre, who was directed to dispose of the same within a stipulated time and communicate the decision to the petitioner within one week thereafter.

4. In due compliance of the said liberty given to the petitioners, a comprehensive representation was made and the competent authority communicated its decision dated 06.05.2016 to the petitioners. The contention of the petitioners that the late payment surcharge cannot be charged beyond two years in terms of Section 56(2) of the Electricity Act, 2003 was turned down simply on the ground that unless the defaulted amount is paid, the late payment surcharge cannot be calculated and charged to the consumer. In other words, it is stated that the moment the petitioner paid the outstanding amount dues of electricity charges, the late payment surcharge is calculated and is reflected in the bill raised immediately after the restoration of the electricity upon payment thereof and took shelter under Clause 7.2.13 of West Bengal Electricity Regulatory Commission's order dated 04.03.2015 read with Regulation 4.14 of Tariff Regulation of the West Bengal State Electricity Regulatory Commission (WBERC). It is not in dispute that the petitioner is depositing the electricity charges which they consumed during the relevant period even after the said order but did not deposit the late payment surcharges, which was shown for the first time in the bill raised for the month of June, 2016. The Distribution Company issued notices dated 18th November, 2016 and 21st November, 2016 respectively signifying their intention to disconnect their electricity unless the late payment surcharges

are paid within the time stipulated therein. The Distribution Company disconnected the supply of electricity on 3rd February, 2017. The petitioners filed the instant writ petition impugning the action of the Distribution Company in not only disconnecting the supply of electricity but also seeking declaration that the claim on account of late payment surcharge is time barred in view of sub-Section 2 of Section 56 of the Electricity Act, 2003.

5. The point, which emerged for consideration in the instant writ petition is whether the late payment surcharges, if not continuously shown in the bills periodically, raised, or if not raised after the disconnection of electricity for non payment of electricity charges for more than two years, is legally recoverable in view of Section 56(2) of the Electricity Act, 2003.

6. Since the legal point appears to be of some importance and may have a larger impact not only upon the entitlement of the Distribution Company to recover the same but also on the large consumers, this Court requested Mr. Sumit Panja, a practicing Advocate to assist and advise the Court as Amicus Curiae.

7. The learned Advocate appearing for the petitioner submits that no sum other than electricity charges can be recovered if not shown continuously as recoverable as arrear of charges for electricity supply beyond two years from the date when such sum became first due. It is submitted that admittedly the supply was disconnected in the month of December, 2012 and was restored in the month of December, 2015 and therefore the demand for late payment surcharge for the first time in the month of January, 2016 is apparently barred under the aforesaid provision and is therefore not legally recoverable. In support of the aforesaid contentions, the reliance is placed upon the judgment of the Bombay High Court in case of Brihanmumbai Municipal Corporation -Vs- Yatish Sharma & Ors. reported in AIR 2007 BOMBAY 73, an unreported judgment of the same High Court in case of M/s Namco Industries Pvt. Ltd. -Vs- The State of Maharashtra & Ors. (W.P. 9906 of 2010 decided on 16th September, 2011), and Mahesh Oil Mill & Anr. -Vs- State reported in AIR 2007 CALCUTTA 203.

8. It is further submitted that the Distribution Company should not disconnect the supply of electricity when the charges for electricity consumed has been deposited by the petitioners. It is strenuously submitted that the Distribution Company has acted beyond the periphery of the Act and the Regulations framed therein and therefore the action for disconnection of supply of electricity is illegal, bad and void.

9. On the other hand, Mr. Nayek, learned Advocate appearing for the Distribution Company submits that the occasion to calculate the late payment surcharge can only arise when the outstanding dues on account of electricity charges is paid. According to him, the Regulation provides the fixed percentage for late payment surcharges and the manner in which it is to be calculated and such calculation cannot be made unless the amount is paid and the charges are calculated from the date of default till its actual payment. It is, thus submitted that the demand

towards the late payment surcharge can only be made after the defaulted amount on energy charges is paid and precisely in the instant case the Distribution Company has raised the demand which is legal and permissible under the relevant Regulations.

10. It is further submitted that the amount, which the Distribution Company is entitled to recover legally, is the sum due and non-payment thereof may attract the disconnection of electricity to the consumer treating him as a defaulter. It is ardently submitted that if there is any dues on the premises even on account of third party such amount is legally recoverable from the purchaser of the third party and placed reliance upon a judgment of Paschimanchal Vidyut Vitaran Nigam Ltd. -Vs- DVS Steels and Alloys Pvt. Ltd. reported in (2009) 1 SCC 210. Mr. Nayek further placed reliance upon a Co-ordinate Bench decision of this Court in case of Rashi Metal Private Limited -Vs- West Bengal State Electricity Board and Others reported in (2007) 1 CHN 210 that any dues attributable to the premises can be recovered by the Distribution Company if the nexus is clearly established between the defaulter consumer and the new consumer.

11. Mr. Nayek further relied upon the West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2013 more particularly Regulation 3.2.2, which postulates the minimum details to be contained in the bill and includes the rate at which the detailed payment surcharge to be levied if the payment is made after due date. He further refers to Clause 3.3.9 of the said Regulation in support of his contention that all categories of the consumer committing default in payment of billed amount shall be liable to pay surcharge, penalty etc. and shall be subjected to such penal action as provided under the Act and the Regulations. He, thus, vehemently submits that the late payment surcharge can only be included in the bill if the payment is made after the due date and the provision of sub-Section 2 of Section 56 of the Act may come in play only when the late payment surcharge is for the first time demanded after two years from the date of such payment. He, thus, concludes that the period of limitation given under sub- Section 2 of Section 56 of the Act is not attracted in the instant case as the late payment surcharge was immediately shown in the next bill raised after the payments of the defaulted amount.

12. Mr. Panja, the learned Amicus Curiae submits that the late payment surcharge or a default payment surcharge is a device or mode to ensure timely payment of electricity charges and is not a penalty but in the form of an interest on the principle amount due to the consumer and placed reliance upon a judgment rendered in case of Tapan Kr. Sinha -Vs- WBSEB & Ors. reported in (1997) 2 CHN 258. According to him, both sub- Section 1 and sub-Section 2 of Section 56 of the Act should be interpreted harmoniously and be given effect to in consonance with the object and purpose behind its incorporation. The language in sub-Section 1 contains two significant expressions namely "neglects to pay" and "any charge for electricity or any sum other than charge for electricity" and are to be interpreted in such manner to make the provision

workable.

13. Mr. Panja further submits that the expression "any sum other than charge for electricity" definitely includes the late payment surcharge and if the consumer neglects to pay the same may attract the disconnection of supply obviously upon issuance of a notice to the licensee. Mr. Panja succinctly submits that sub-Section 2, which starts with a non-obstante clause cannot be interpreted to whittle down or take away the effect of any provision of the Act and placed reliance upon the judgment of the Supreme Court in case of P. Virudhachalan -Vs- Management of Lotus Mills reported in AIR 1998 SC 554.

14. Mr. Panja would further submit that sub-Section 2 of Section 56 of the Act creates embargo not only against the recovery of the sum due from the consumer but also the disconnection of supply of electricity if such sum is not shown continuously after the period of two years from the date when such sum became first due. In this regard it is, further submitted that it is imperative on the part of the Distribution Company to raise bill upon the defaulted consumer continuously on periodical basis and if such recourse is not taken, the surcharge is not recoverable after two years when it becomes first due. He relies upon Regulation 21 of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) (Amendment) Regulations, 2013 amending Regulation 4.14 of the proposed Regulations by way of substitution wherein the exhaustive mode for calculation of the detailed payment surcharge is provided. It is, thus submitted that the rate at which the detailed payment surcharge at intervals connotes that it is not subject to the actual payment of the defaulted amount relating to energy charges. As per Mr. Panja, the sum became first due appearing in sub-Section 2 of Section 56 should be read in consonance with the Regulation 4.14 incorporated by way of such amendment and be calculated at such prescribed rate as and when the occasion so arise. He, further relies upon Regulation 3.2.2 of Supply Code Regulation, 2013 and submits that once the modality for preparation of the bills is provided and includes the detailed payment surcharge, the same should be reflected in each bill raised upon the defaulter consumer.

15. To elaborate such submission, Mr. Panja submits that there is no fetter either in the Act or in the Regulation in raising the bill by the Distribution Company on periodical basis upon the defaulter consumer as his liability continues towards the payment of the minimum fixed charges accruable on every month. According to Mr. Panja, Regulation 4.14 is explicit and clear because of the different rate at every interval of the default in calculating the late payment surcharge either during or after such interval and continuously showing the same in the bill when the default first occurs and therefore the stand of the Distribution Company that the late payment surcharge can only be calculated after due payment is opposed to such Regulation.

16. Mr. Panja succinctly submits that the Court must adopt such course while interpreting the provisions contained in the parent Act as well as the Regulations

framed thereunder in such manner to make it workable and the avoidance must be shown either to extract some expressions or words or to add something which is absent therein. If the words used in the Statute is clear and unambiguous, the effect should be given to the natural meaning thereof as held in S.A. Venkataraman -Vs- State reported in AIR 1958 SC 107. On the point of judicial review Mr. Panja would contend and it is a well known principle that the Writ Court does not act as a Court of Appeal against the decision / order of the authority but certainly exercises such jurisdiction in a decision making process and if the impugned order is passed either contrary to law or in excess of the powers conferred under the relevant Statute, there is no fetter on the part of the Court to interfere therewith and relies upon the judgment of the Apex Court in case of Kedar Singh & Anr. -Vs- Union of India & Anr. Reported in 1989 (1) SCC 204 and M.I. Builders Pvt. Ltd. -Vs- Radhey Shyam Sahu & Ors. reported in (1999) 6 SCC 464. He thus concludes that the demand of detailed surcharge or the late payment surcharge beyond two years from the date when the sum became first due without continuously showing the same as recoverable neither empowers the Distribution Company to recover the same nor disconnect the supply of electricity for non payment thereof.

17. Before I deal with the submissions so advanced I feel it is necessary to record that though the communication dated 06.05.2016 reflects the WPERC's order dated 04.03.2015 but entire argument is advanced before this Court on Regulations, 2013 and therefore this Court can safely proceed to interpret the various provisions contained therein to form the final opinion in the instant writ petition. Section 56 of the Act contains the title "disconnection of supply in default of payment" and empowers the Distribution Company to cut off the supply of electricity not only when the person neglects to pay any charge for electricity but any sum other than it in addition to the right to recover such charges or sum by suit. The said Section is quoted as under: "56. Disconnection of supply in default of payment.-(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days" notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest,-

(a) an amount equal to the sum claimed from him, or

(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

This clause provides that in case a person neglects to pay any sum due from him to a licensee or a generating company in respect of supply, transmission, distribution or wheeling of electricity, the licensee or the generating company shall be empowered to disconnect such supply after giving a notice of fifteen days. However, the supply of the electricity shall not be cut off if such person deposits the amount equal to the sum claimed under protest or as security pending disposal of the dispute. This clause also provides that no sum due from any person under this section shall be recoverable after a period of two years from the date when such sum became first due. Unless the same has been shown continuously as recoverable as arrears of charges for electricity supplied. (Notes on Clauses)."

18. Sub-Section 2 of Section 56 of the Act commences with a non-obsante clause and puts an embargo on disconnection of supply of electricity if the sum due from the consumer has not been shown continuously as recoverable as arrear of charges for electricity supply after the period of two years from the date when such sum became first due. On harmonious reading of both the sub-Sections appearing in Section 56 of the Act a distinction is drawn between the charge for electricity and any sum other than it duly recoverable by the Distribution Company. Such distinction is apparent and real and do not invite any confusion in the mind that the consumer is liable not only to pay the electricity charges but any other sum which is otherwise imposed by way of Act or Regulation in relation to supply of electricity. It is, therefore, evident that the "sum" is a comprehensive word and used in disjunction with the charge for electricity and must be interpreted as any amount flowing from or arising from the event of supply of electricity or of like event attributable thereto and certainly includes the late payment surcharge or a detailed payment surcharge within its contour.

19. The interpretation that the same includes the late payment surcharge or detailed payment surcharge is however fortified from the expression "any sum other than charge for electricity" appearing in sub-Section 1 of Section 56 of the Act. There is no ambiguity in my mind that apart from the charge for electricity any other amount or sum, which is legally leviable on supply of electricity, can be recovered by the Distribution Company and may empower it to disconnect the supply if the consumer neglects to pay the same. But the point hinges on the interpretation of sub-Section 2 of Section 56 of the Act, which fetters the

Distribution Company to recover such sum, after a period of two years from the date when such sum becomes first due if not shown continuously as recoverable as arrears of charges. Regulation 4.1.1 of Supply Code Regulation, 2013 provides that the licensees / Distribution Company shall issue a disconnection notice through bill against the electricity consumption if the payment has not been made within 15 days after the due date and such disconnection is subject to the satisfaction of sub-Section 2 of Section 56 of the Act under Regulation 4.1.3. It is, thus manifest that the Distribution Company before disconnecting the supply of electricity must strictly adhere to the provisions contained under sub-Section 2 of Section 56 of the Act and cannot depart therefrom.

20. Furthermore, even if the Regulation is silent, the provisions contained under the parent Act cannot be surpassed or non-adhered to by the Statutory Authority. It is a trite law that subordinate legislation cannot interpret a provision, which is directly in conflict with or repugnant to the provisions contained in the parent Act. Regulation 3.2 of the said Regulation was incorporated to bring more transparency in the billing system and Regulation 3.2.2 thereof mandates the details or input in all such bills raised upon the consumer. Clause XXIII of Regulation 3.2.2 makes it imperative to disclose the rate at which the detailed payment surcharge shall be levied if the payment is made after due date. It does not appear from any of the provisions contained either in the Act or the Regulation that no bill is required to be generated or raised upon the consumer even after the supply is disconnected as such consumer is required to pay the minimum rental charges for the meter and other allied charges dehor consumption of electricity. Regulation 4.10 of the said Regulation makes the position more clear and is quoted below:- "4.10 Notwithstanding anything contained contrary elsewhere in any other Regulations of the Commissions, during disconnection period for any reasons whatsoever but prior to termination of supply agreement or deemed termination of agreement the consumer is liable to pay the meter rent, minimum charge and fixed charge or demand charge as applicable."

21. The expressions and words used in both the sub-Sections of Section 56 of the Act are susceptible to be harmonized with clarity and precision. The expression "such sum became first due" appearing in sub-Section 2 thereof cannot be divorced and / or segregated from the expression "neglects to pay" any charge for electricity or any sum appearing in sub-Section 1. The word "neglect" in ordinary sense means fail to give due care, attention or time. The word "fail" is relatable to thoughtlessness and carelessness or to ignore or disregard. The time within which the amount is to be deposited is indicated in the bill raised by the Distribution Company and if disregard to its adherence is shown it would amount to negligence to pay the same and will activate the consequences provided in sub-Section 1. The expression "sum became first due" is to be interpreted in the sense when the consumer did not pay the amount within the time limit shown in the bill raised by the Distribution Company and by no stretch of imagination can be related with the payment of the defaulted

amount by the consumer after disconnection of supply. The word "due" is prefixed with the word "first" and due regard should be given to interpret the same. The amount becomes due when the payment is not made timely and becomes first due when a particular bill is not paid within the stipulated time or extended time. Any other interpretation may frustrate the incorporation of the word "first" before "due". The period provided under sub-Section 2 of Section 56 shall reckon from the non payment of the first bill and unless the sum is continuously shown as recoverable in all subsequent bills, the same cannot be recovered and no disconnection can be made by the Distribution Company after the period of two years from such date. It is no longer res-integra that the non obstante clause used in the Section does not take away the effect of the provisions contained in the Act but controls the other provisions and made them subject to the Section containing non obstante clause. The relevant observations of the Supreme Court in case of P. Virudhachalan (Supra) is quoted as under:-

"8. The aforesaid relevant provisions of the Act, therefore, leave no room for doubt that once a written settlement is arrived at during the conciliation proceedings such settlement under Section 12(3) has a binding effect not only on the signatories to the settlement but also on all parties to the industrial dispute which would cover the entire body of workmen, not only existing workmen but also future workmen. Such a settlement during conciliation proceedings has the same legal effect as an award of Labour Court, or Tribunal or National Tribunal or an arbitration award. They all stand on a par. It is easy to visualise that settlement contemplated by Section 12(3) necessarily means a written settlement which would be based on a written agreement where signatories to such settlement sign the agreement. Therefore, settlement under Section 12(3) during conciliation proceedings and all other settlements contemplated by Section 2(p) outside conciliation proceedings must be based on written agreements. Written agreements would become settlements contemplated by Section 2(p) read with Section 12(3) of the Act when arrived at during conciliation proceedings or even outside conciliation proceedings. Thus, written agreements would become settlements after relevant procedural provisions for arriving at such settlements are followed. Thus, all settlements necessarily are based on written agreements between the parties. It is impossible to accept the submission of learned counsel for the appellants that settlements between the parties are different from agreements between the parties. It is trite to observe that all settlements must be based on written agreements and such written agreements get embedded in settlements. But all agreements may not necessarily be settlements till the aforesaid procedure giving them status of such settlements gets followed. In other words, under the scheme of the Act, all settlements are necessarily to be treated as binding agreements between the parties but all agreements may not be settlements so as to have binding effect as provided under Section 18(1) or (3) if the necessary procedure for giving them such status is not followed in given cases. On the aforesaid scheme of the Act, therefore, it must be held that the settlement arrived at during conciliation proceedings on 5-5-1980 between Respondent 1-management on the one hand

and the four out of five unions of workmen on the other, had a binding effect under Section 18(3) of the Act not only on the members of the signatory unions but also on the remaining workmen who were represented by the fifth union which, though having taken part in conciliation proceedings, refused to sign the settlement. It is axiomatic that if such settlement arrived at during the conciliation proceedings is binding on even future workmen as laid down by Section 18(3)(d), it would ipso facto bind all the existing workmen who are all parties to the industrial dispute and who may not be members of unions that are signatories to such settlement under Section 12(3) of the Act."

22. If sub-Section 2 of Section 56 of the Act creates a bar against the recovery of any sum if not continuously shown as recoverable after a period of two years such provision has to be given full effect to and be interpreted in such manner. Regulation 4.14 of the Regulations, 2013 is not anomalous in the sense that the Distribution Company cannot calculate the late payment surcharge unless the defaulted amount is deposited. The said Regulation clearly provides that the late payment or delayed surcharge shall be calculated at the rate of 1% for the first three months of delay which would be enhanced to 1.5% per month up to next three months and thereafter at the rate of 2% per month beyond first six months of delay and such calculation would be made from the due date for payment. Therefore, the delayed payment surcharge or late payment surcharge would immediately be attracted if the payment is not made within due date and therefore this Court does not find any difficulty in continuously showing the late payment surcharge in all subsequent bills raised for fixed charges upon the licensee. In case of *Yatish Sharma* (Supra) a sum does not become due unless the bill for energy charges is raised and served and is continuously shown as recoverable as arrears of charges for electric supply. In this regard, the observations made in paragraph 8 of the said report is quoted as under:- "8. The reference to a charge for electricity due from a person to the licensee or, a generation company occurs in two contexts in the provisions of section 56. The first context is sub-section (1) of section 56 in which a neglect to pay a charge for electricity due to a licensee or a generating company can form the basis of a disconnection of supply of electricity if a notice of 15 clear days is given. The second context is sub-section (2) of section 56 in which the recovery of a sum due from the consumer under the section is restricted to a period of two years from the date when such sum first became due. In construing the expression "due" the interpretation that is to be placed must be harmonized so as to be applicable both in the context of sub-section (1) and sub-section (2) of section 56. A sum cannot be said to be due from the consumer unless a bill for the electricity charges is served upon the consumer. Any other construction would give rise to a rather anomalous or absurd result that a disconnection of supply would be contemplated even without the service of a bill. Though the liability of a consumer arises or is occasioned by the consumption of electricity, the payment falls due only upon the service of a bill. Thus, for the purposes of sub-section (1) and sub-section (2) of section 56, a sum can be regarded as due from the

consumer only after a bill on account of the electricity charges is served upon him. In fact, under the later part of sub-section (2) of section 56 an exception is carved out to the principle that no sum due from the consumer shall be recoverable after a period of two years from the date when such sum became due. The exception is that when such sum is shown continuously as recoverable as arrears of charges for electricity supply. In other words, where a bill continues to show the sum recoverable as arrears of charges for electricity supplied, the sum due can fall for recovery even after the expiry of a period of two years."

23. The reliance can be safely made to another judgment of the Bombay High Court rendered in M/s Namco Industries Pvt. Ltd. (Supra) wherein it is held:- "19. There is no merit in the submission which has been urged that the claim is barred by limitation. Sub section (2) of the Section 56 of the Electricity Act 2003 provides that notwithstanding anything contained in any other law for the time being in force, no sum from any consumer under the Section shall be recoverable after a period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the licensee shall not cut off the supply of electricity. In the present case the bills which were issued by the distribution licensee did reflect the arrears of electricity charges. In any event, the distribution licensee under Regulation 10.5 is entitled to assert its charge over the property in the hands of the new transferee and to recover unpaid charges subject to the permitted period specified therein. We, therefore, reject the plea that the claim is barred on the ground of limitation."

24. In somewhat similar circumstances this Court in case of Mahesh Alloy Mill (Supra) held that if the bills raised by the Distribution Company did not include the other sum than the electric charges as recoverable due sub-Section 2 of Section 56 of the Act shall come to play in these words:- "7. It is really confusing when counsel for CESC says that his client did not demand payment of the amount as one due and recoverable from the petitioners. In the bill in question CESC demanded payment of the amount on account of unrealised arrears for the months in question. Therefore, it is apparent that CESC demand the amount as sum due and recoverable from the petitioners as arrear of charges for electricity supplied during the months in question. There can be no doubt, in the face of the clear provisions in Section 56(2), that CESC was simply not empowered and entitled to issue the notice threatening to cut off supply of electricity on failure to pay the amount, from 1993 till raising the bill for September 2004 the amount in question had never been shown in any bill or in any other document, sent and served on the petitioners, as an amount recoverable from them as arrear of charges for electricity supplied."

25. In the instant case, the electric supply line was disconnected on 12th and 13th December, 2012 for non payment of electricity charges in January, 2010 and was restored on 15th December, 2015 when the petitioners paid the defaulted amount. The bill for June, 2016 for the first time included the late

payment surcharge, which was never made known to the petitioner during the period of disconnection. Admittedly, the said sum is shown for the first time after a period of two years from the date of the first default. The Distribution Company is a creature of a Statute and therefore cannot travel beyond it. The Statutory Authority has to act strictly within the four corners of the Statute as any departure therefrom may entail such action liable to be struck down. If the provisions in the Statute is clear and unambiguous no departure is permissible therefrom, even when the consequences appear to be harsh. The question of prejudice in blatant violation of the statutory provisions cannot come in aid of the Distribution Company.

26. I am not oblivious of the proposition of law that the Writ Court exercising the power of judicial review does not act as a Court of Appeal but exercises such power if the process by which the decision has arrived appears to be not in consonance with law (see (1989) 1 SCC 204, (1999) 6 SCC 464).

27. This Court, therefore finds that the demand for the late payment surcharge for the first time after a period of two years when such sum becomes first due is illegal, contrary to the provision contained in Section 56(2) of the Act and the Regulations framed thereunder and is hereby set aside and cost.

28. Since the disconnection of electricity was solely on the ground of non deposit of the late payment surcharge, such action cannot withstand in view of the observations recorded hereinabove. The same is also set aside and quashed.

29. The Distribution Company is directed to restore the supply of electricity within 72 hours from date. The writ petition is thus disposed of.